Understanding Cambodia's Weak Decentralization: From A Textual Approach

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ABSTRACT

This short article revisits what existed in the legal framework in the first few years when Cambodia was starting to experience decentralization. By using six components to evaluate the degree of "political decentralization"—constitutional guarantee, local elections, recall, popular participation, sphere of local power, and the central-local separation of functions—this review reveals that decentralization in Cambodia was not meant to become strong.

Keywords: legal framework; decentralization; political decentralization; Cambodia

1. INTRODUCTION

By late 1990s decentralization was still a new concept for Cambodia. Following the UN-led elections in 1993, there was no policy for decentralization although the overall institutional development suggests that the central-local relations had not been truly and bureaucratically centralized (Prum 2005b). Until 2002 all sub-national units were appointed by the central government and therefore were not representatives of the local inhabitants. Eventually, Cambodian government, apparently under external pressure from aid agencies, had to adopt a decentralization law in March 2001 (Law on Khum/Sangkat Administration, LKSA). Khum/Sangkat Councils have become elected to serve a five year-term (LKSA, Art.11).

The Constitution provides for three administrative levels for both cities and provinces: cities are divided into khans (districts) which, in turn, are sub-divided into sangkats (communes). Provinces are sub-divided into sroks (districts) and sroks into khums (communes). The current decentralization policy covers only the lowest units: Khum and Sangkat.

2. LITERATURE REVIEW

Decentralization becoming a legal term. Although "it is difficult to determine from where the motivation came for the Cambodian government to pursue its policy of decentralization" (Ayres 2001:51), several overall arguments are possible. First, it was widely believed that the closer the administration is to the people, the better they can serve them and help to alleviate poverty. Such an argument appeared on the 'statement of reason' attached to the draft-

law on decentralization submitted to the National Assembly. Indeed, the Cambodian government may have found decentralization a desirable policy following a remarkable success of the donor-funded SEILA Program which started in mid-1990s dealing with poverty alleviation (Seila 2000). The second and perhaps the strongest argument was that by solely applying the party-member candidacy system for Khum/Sangkat Councils elections, the ruling political parties would be able to better control or manage to win support from the bottom of society in the following national legislative elections (Prum 2005a: 125-6; Blunt and Turner 2005: 77). Third, decentralizing power to small units would not "threaten a major shift" of "state power" from the center to the peripheries for this country's "stability in economy and polity is recent" (Turner 2002: 362). The term 'decentralization' became a legal term when LKSA uses it in its first article: "The present law regulates the administration of all Khum/Sangkat in the kingdom of Cambodia in accordance with the politics of decentralization".

Rationale and Components of Political Decentralization. Classic theorists such as Alexis de Tocqueville and John Stuart Mill firmly believed that local self-government system had a set of political values: political education and the respect of local interests. Thus,

[T]he strength of free peoples resides in the commune. Communal institutions are to liberty what primary schools are to science; they put it within people's reach; they teach people to appreciate its peaceful enjoyment and accustom them to make use of it (Tocqueville, reprint, 1961: 59).

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For Mill:

The very object of having a local representation, is in order that those who have any interest in common, which they do not share with the general body of their countrymen, may manage that joint interest by themselves (Mill, Representative Government, Reprint 1977).

Contemporary proponents for political decentralization contend that it could lead to political education, training in political leadership, political stability and political equality. Smith (1985: 18-30) believes in:

- Political education: This helps people to understand the role of political debate, the selection of representatives, and the nature of policies, plans, and budgets. "Through experience in local government people learn to choose between priorities and leaders" (1985: 188).

- Training in political leadership: Prospective political leaders learn to develop skills in policy making…The quality of national politicians is enhanced.

- Political stability: People's trust in government can be strengthened through popular participation in formal politics such voting and other practices. "Social harmony, community spirit and political stability" can also be attained.

- Political equality: Greater participation associated with decentralization reduces the likelihood of the concentration of power in a few hands at the center and distributes political power to localities, thus better meeting the needs of the poor and the disadvantaged.

Likewise, Olowu (1997: 108) attaches to decentralization some political values in three ways:

First, [local governments] can help educate citizens in the art and discipline of responsible government… Second, local governments help to recruit and train the new political leadership which can afterwards aspire to national-level leadership. Third, they make possible the participation of the greatest number of citizens in the political and democratic process. This is because local governments are more proximate to the public than the central government. As a result,… local authorities provide a window of democratic opportunity for the public to assert and extract higher levels of accountability from government officials at this level. The process is greatly assisted by the fact that local politicians are closer geographically, socially, and economically to their public compared to any other level of government.

In this reasoning, political decentralization (also called 'democratic decentralization') tends to describe a series of arrangements aiming at empowering both local governments as representative elected offices and local inhabitants through an informed participation. Representative politics and popular participation can usually advance local development and create a more responsive and accountable government (World Bank 1997: 110-120). To achieve these aims, political decentralization often needs a Constitutional guarantee or at least a statutory basis (See e.g., Rondinelli 1999, Manor 1999, Cohen and Peterson 1999). Political decentralization emphasizes the relationship between state and its citizens through various participation mechanisms leading to a "participatory development" (Vedeld 2003: 160). Seddon (1999: 15-7) sees participation as both a means ('precondition') and a goal of democratic decentralization.

If political decentralization means "some reduction in the degree of accountability of sub-national governments to the central government" (Smoke 2003: 11), it clearly implies that political decentralization should be supported by two major pillars local power and local participation. In other words, political decentralization broadly means two things: empowerment of local government, and empowerment of local inhabitants. The empowerment of local government takes three components as its basis, namely, Constitutional or statutory guarantee, a meaningful sphere of devolved power and a clear separation of central-local functions, while the empowerment of local inhabitants is done through the election of local councilors, the participation in decision-making, and the right of inhabitants to recall unpromising local councilors. Thus, the strength of a political decentralization is evaluated based on the strength of these components.

It implies that political decentralization depended on at least six components namely, Constitutional guarantee, a meaningful sphere of devolved power, clear separation of central-local functions, democratic election of local councilors, popular participation, and the right of the inhabitants to recall unpromising local councilors. Thus, political decentralization may be defined as a process which tends to give more power to both elected local authorities and participatory inhabitants with the effectiveness of the

process being assessed by whether or not the sphere of devolved power has a Constitutional or statutory guarantee and also by whether or not inhabitants can truly influence local politicians over policies.

3. TEXTUAL APPROACH

Government's Policy of Decentralization. Cambodian government did not have any grand and comprehensive policy leading to the adoption of the decentralization system except an overall understanding revolving around two pieces of methods dominated by French system: décentralisation and déconcentration.[1] To French readers, décentralisation denotes the recognition of a set of local affairs as well as the transfer of roles and responsibilities from the central level to the lowest sub-national levels, that is- communes under a Constitutional guarantee of the local autonomy known as the principle of the libre administration, while déconcentration refers to the administration of other local levels which merely function as the state agents in the fields, and therefore do not hold any such local autonomy (Gruber 1996).

In the Cambodian case, a Governance Action Plan (GAP) was adopted by the government in March 2001 and highlighted eight priority areas of governmental reforms in which "decentralization and local governance" appeared as one.[2] However, the government fell short as to 'how' this reform could be achieved. Ironically, GAP was agreed upon after the decentralization law itself had been adopted (by the National Assembly on January 12th 2001 and the Senate on February 1st 2001). GAP also mentioned "the adoption of a policy framework" as one of its benchmarks. Clearly the LKSA was done without any comprehensive agreed policy beforehand as to how it would be implemented. This lack of an a priori policy will simply fuel conflicting interpretations among agencies and stakeholders afterwards. Without any grand comprehensive policy, it would be necessary to discern a framework from the text of the law itself.

Table 1: Law on Khum/Sangkat Administration, 2001	
Article(s)	**Description**
2-4	Khum/Sangakat as legal entity (corporate status)/ Acquisition of power through elections
21, 23	Meetings at least once a month and shall be public and democratic

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1 The vast majority of textbooks at the faculty of law in 1996 (the only one state law school available in Cambodia at that time) were in French and all about the French system. And it was only from early 1990s that décentralisation and déconcentration started to appear on handouts to students of administrative law.

2 See "Governance Action Plan" (GAP), Speech by SOK An, Minister in charge of The Office of the Council of Ministers, and Chairman of the Council for Administrative Reform, at the Consultative Group Meeting, Phnom Penh 19- 21 June 2002.

27-28	Khum/Sangkat mayor can create committees/ A clerk appointed by the Minister of Interior
41	Recognition of local affairs within the respect of national interests
42-44	Dual responsibility for Khum/Sangkat: General socio-economic local affairs and Agency functions. Art. 43 reads: • Maintaining security and public order • Managing necessary public services and make them work well • Encourage the improvement of contentment and welfare of the citizens • Promoting social and economic development and upgrading the living standard of the citizens • Protecting, preserving the environment, natural resources, culture and national heritages • Reconciling citizens' concept to seek for mutual understanding and tolerance • Performing general affairs to respond to the citizens' needs.
45	Excluded from the Khum/Sangkat functions: forest, post and telecommunication, national defense, national security, monetary, foreign policy, fiscal policies, and other fields as specified by law and regulations
47	Roles and functions of Khum/Sangkat to be specified in detail by cabinet orders (sub-decrees)
48-49	Powers of Khum/Sangkat to adopt and execute deika (by-laws) within law and other regulations
53-55	Control of legality on Khum/Sangkat decisions and power of substitution by the Minister of Interior
57-58	Dissolution of Khum/Sangkat by the Minister of Interior
59	Creation of a body subordinate to the Ministry of Interior to deal with local administration (Now known as the Department of Local Administration, DoLA)
61-62	Conformity of Khum/Sangkat development plans with the national socio-economic plan/ Khum/Sangkat plans to be updated every year
64	Khum/Sangkat plans must ensure the popular participation in the whole process
73	Khum/Sangkat have own budget and assets
74-75	Incomes from fiscal and non-fiscal taxes and other service charges/ Local Tax Act to be adopted/ Income from transfers and subventions from the national budget
76	Incomes charged from performing agency functions
80	Khum/Sangkat banned from borrowing and any other financial obligations
87-88	Creation of an inter-ministerial body called the National Committee to Support Communes (NCSC) (commune=khum/sankat). NCSC has the DoLA as its secretariat. The most important task of NCSC is to decide the allocation of functions between the central government and communes.

Some quick comments can be made regarding the framework adopted by the law. What did decentralization intend to cover? Khum/Sangkat got vested with a very broad competency including the 'general competency clause', but in reality their works were reduced to adopting development plans and making civil registrations. Their power was restrained within a strict compliance with all higher norms (Prum 2005a). The question as to

why the government had come up with the idea of decentralization could never find a clearer answer except a general idea that decentralization could help local governments to better provide services. Cambodian decentralization did not come from either local people's demanding voice or fear of separatism. The geographical boundaries to be covered by decentralization were clear, however. The law clearly tells where. Indeed, Khum/Sangkat are the only decentralized authorities. A big question was lingering on as to who would actually be tasked with carrying out the decentralization dream. The law created the DoLA and the NCSC (see Table 1) but failed to give principles or guidelines to govern the relationships between these two bodies as well as between them and other existing bodies at that time, i.e., the Seila Task Force (responsible body for the Seila Program), making it unclear whether the NCSC's instructions would be binding on these and other agencies and line ministries. In practice, it is DoLA that is daily involved in the process. However, a big puzzle was that since DoLA was a part of the Ministry of Interior, who could expect the one to lose power the most to be active? Timeframe was yet another issue. The law was unclear as to when decentralization should be implemented. This absence of time sequences resulted in many major ministries (i.e., health, education) being reluctant to delegate power to Khum/Sangkat. Now, almost two decades following the promulgation of the law, Khum/Sangkat still have nothing to do with elementary schools in their territory. Above all, it was the question of how which commanded attention to the fullest. As shown in Table 1 above, Khum/Sangkat had (still have) a dual responsibility: local affairs (including general competency) and agency functions (through delegations), but nothing could tell what the functions under the label of local affairs were; also there was no legal obligation on central ministries to delegate functions to Khum/Sangkat either. Within such environment, the success of Cambodian decentralization should be very much unpredictable. But was it so in political terms?

The Six Components in Cambodian Political Decentralization. The current Constitution (promulgated in 1993) mentions nothing about the decentralization. Political decentralization in Cambodia has had no Constitutional guarantee. The statutory basis (LKSA) was indeed re-centralizing the administration albeit in some new popular terms. Prum's analysis (2005a) clearly pointed out that the sphere of local power was theoretically almost

non-existent. Blunt and Turner (2005: 83) further confirm that the actual decision-making power of Khum/Sangkat was virtually none. Indeed, there was no clear central-local separation of functions so as to formulate a sphere of local power distinct from the central government's competency. Article 45 which excludes some specific areas from Khum/Sangkat's competency does not mean that the local power covers everything that is not excluded. In fact, not only there was no central-local separation of functions, the legislature improperly delegated power (Art. 47) to the central government to fix at will what should be the functions of Khum/Sangkat (Prum 2005a: 130-35).

Until mid-2005 no legal documents had materially clarified the allocation of functions as posited by the Art. 88. Note that the internal report "Memorandum Outline of the Scope and Content of Decentralization in Cambodia" prepared by the Ministry of Interior had made it clear that "specific or general functions and powers for Khum/sangkat must still be identified by sub-decree" and that it was necessary to develop guidelines to establish what functions to be decentralized (devolved) and also those to be deconcentrated. The awaited Government's order, unfortunately, did not live up to this expectation. Indeed, Art.61 of the "Anukret on the Decentralization of Power, Roles, and Functions to Khum/Sangkat" (government order, dated 25 march 2002) merely repeated exactly the same vague wording of the LKSA's Art. 43 (See Table 1). One still legitimately wonders what the functions of Khum/Sangkat would really be. Khum/Sangkat Councils became elected through direct popular vote (LKSA, Art.4). The popular participation in the "whole process" of the development plan was guaranteed (LKSA, Art.64). Indeed, the "Inter-Ministerial Prakas on the Khum/Sangkat Development Planning" (Co-signed by Minister of Interior and Minister of Planning, dated 7 February 2002) reiterated the necessity of the "participation of all people concerned" in the implementation of Khum/Sangkat development plans in its Art.4.

The periodic elections should occur once in five years and the idea of participation was still embryonic. Inhabitants of Khum/Sangkat were not to have right to dismiss any local officer. Within the interval, inhabitants would hold no verdict on eventually unpromising local councilors for the mechanism of recall was not recognized. Interestingly, the dissolution of a Khum/Sangkat council was resting

with the power of the Minister of Interior (LKSA, Art. 57-58). The development planning was to be made only once for the whole five year-term (with possible annual modifications). Thus, it would be in the implementation phase that one could expect more frequent participations. Surprisingly, the Inter-Ministerial Prakas mentioned above only required the participation during the implementation phase from "those who would benefit" (Art.21).

In brief, assuming that each component is equally important, the textual approach ranks Cambodian political decentralization in a very low position (2 out of 6).

Table 2: The Six Components and Cambodian Political Decentralization			
	Yes	No	Virtually No
Constitutional Guarantee		X	
Local elections	X		
Recall		X	
Participation	X		
The sphere of local power (Khum/Sangkat)			X
Central-local separation of functions			X

Note: For analysis on the sphere of local power and central-local separation of functions, see Prum (2005a)

4. CONCLUSION

At least on the face of the law, political decentralization has hardly existed in Cambodia. Indeed, the six components of political decentralization, namely 1) Constitutional guarantee, 2) local elections, 3) recall, 4) popular participation, 5) the sphere of local power, and 6) the central-local separation of functions, were in a poor shape from the beginning. While the components 5 and 6 were virtually non-existent, the only available components, elections and participation, were not very assertive and frequent enough. Revisiting the textual (legal) approach could prove its usefulness in understanding in which ways a governance system was built to behave. In the case of political decentralization in Cambodia, this review article indicates that for a political decentralization to be effective, the law would need to be much more decentralization friendly right from the start.

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